

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Diabate Amadou,

Civil No. 09-391 (DWF/SER)

Plaintiff,

v.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION  
AND MEMORANDUM**

Metropolitan Orthotic Laboratory, Inc.,

Defendant.

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Diabate Amadou, *Pro Se*, Plaintiff.

Jeffrey J. Fenske, Esq., Fenske Law Office, PC, counsel for Defendant.

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This matter is before the Court upon Plaintiff Diabate Amadou's ("Plaintiff") self-styled objections to Magistrate Judge Steven E. Rau's May 9, 2011 Report and Recommendation insofar as it recommends that this action be dismissed for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Counsel for Defendant filed a response to Plaintiff's objections on May 27, 2011 (Doc. No. [42]).

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

**ORDER**

1. Plaintiff Diabate Amadou's objections (Doc. No. [41]) to Magistrate Judge Steven E. Rau's May 9, 2011 Report and Recommendation are **DENIED**.
2. Magistrate Judge Steven E. Rau's May 9, 2011 Report and Recommendation (Doc. No. [40]), is **ADOPTED**.
3. This action is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12 (b) (1).

Dated: July 18, 2011

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge

**MEMORANDUM**

The Court finds and concludes, as the Magistrate Judge did, that there is no subject matter jurisdiction for the reasons stated by Magistrate Judge Rau. Sadly, not only is the Plaintiff upset, but of some concern to the Court is that he believes that he has been treated in a perhaps racist and biased fashion which is indeed unfortunate for all concerned, including the justice system.

Whether the Plaintiff has a lawsuit, but with a Court that does have subject matter jurisdiction, is for the Plaintiff to decide. The Court would urge the Plaintiff to discuss the matter with people he trusts and confides in, be they lawyers or nonlawyers.

Based upon the record before the Court, the Court concludes that it does not have subject matter jurisdiction over the Plaintiff's action before the Court.

D.W.F.